March 12 1869
Mr Hale
April 21 1870
Submitted
Judge Miller

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~207~~ 181

CHARLES J. CARPENTER, PLAINTIFF IN ERROR,

vs.

HENRY W. WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED DECEMBER 19, 1868.

May 23 1870
Dismissed
Dan'l Donaldson Clerk

Jno Miller

SUPREME COURT OF THE UNITED STATES.

No. 181, December Term, 1869.

CHARLES J. CARPENTER, *Defendant, Plaintiff in Error,*
vs.
HENRY W. WILLIAMS, MELVIN L. GRAY, and SANFORD B. KELLOGG, *Plaintiffs, Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

1*st.* *There is no Jurisdiction.*

Both parties claim the same common-field lot, in the Grand Prairie common field of St. Louis, under the same confirmation by act of Congress of 13th June, 1812, vesting the title absolutely in some person who, as an inhabitant of St. Louis, had inhabited, cultivated, or possessed, the said lot, as one belonging to St. Louis prior to the 20th December, 1803.

Joseph Lacroix, of St. Louis, had possessed and cultivated the lot a long time before and after 1803. Louis Lacroix had never cultivated it; he had died in 1800; was a resident of St. Charles; and the defendant first entered, as a trespasser on this lot, in 1852, under a quit claim deed from the heirs of Louis Lacroix. The grantees of Joseph Lacroix were in the actual possession when Carpenter, a trespasser, entered, in 1852; but the owner, Judge Townsend, was in California, and his tenants fraudulently attorned to Carpenter; and Williams, grantee of Townsend, sued defendant, in ejectment, in 1856.

The only defense set up by Carpenter is, that the recorder of land titles at St. Louis, on hearing the proofs of inhabitation and cultivation by Joseph Lacroix, issued a certificate in favor of Louis Lacroix, by name, on March 3, 1825. There was no such man as Louis Lacroix in existence in 1825. He had died at *Cote sans Dessein*, in 1800, unmarried (Rec. pp. 55, 61), and the heirs of his brother, St. Paul Lacroix, conveyed by quit claim to Marshall, grantor of Carpenter, the defendant, in 1850. This was the first adverse claim ever made against the title of Joseph Lacroix, the owner and confirmee under the act of June 13, 1812, which vested title by force of said act.

The defendant insists that Joseph Lacroix ought to have sued the heirs of Louis Lacroix, in 1825, 1835, or 1855, because the recorder had issued a certificate of confirmation, in 1825, to Joseph Lacroix in the name of Louis Lacroix. Joseph Lacroix could not read or write, and spoke the French language only. He held possession of the field-lot until his death, in 1831 (Rec. pp. 29, 34, 35, 36, 56), and his children sold to Cofield and Townsend, grantors of plaintiff, in 1848 (Rec. pp. 42 to 51). How the failure of Joseph Lacroix to sue the heirs of Louis Lacroix, before they made a claim to the land, can affect the right to this property, the plaintiffs are unable to discover. Louis Lacroix's heirs were not subject to any action for the mistake of the recorder until they made a claim under the mistaken certificate in favor of their ancestor. They were not in fault until they attempted to take advantage of the mistake for their own benefit. When they did so, the plaintiff representative of Joseph Lacroix sued their grantee and recovered a judgment.

Louis Lacroix was a Canadian and a voyageur, who lived in St. Charles, Missouri, in Spanish times. He never was an inhabitant of St. Louis, and died, unmarried, at *Cote sans Dessein*, on the Missouri river, about the year 1800, leaving his brother, St. Paul Lacroix, an inhabitant of St. Charles, his sole heir at law; and he died in 1814 at St. Charles. (Rec. pp. 55, 61, 62.)

Joseph Lacroix was a lime-burner, an old inhabitant of St. Louis in Spanish times, and died there in 1831, leaving a large

family of legitimate children. He had village lots in St. Louis, and cultivated this field-lot in the Grand Prairie common fields of St. Louis prior to the 20th day of December, 1803, which lot adjoined a field-lot of one Pierre Barribeau, his neighbor and friend, who was also an inhabitant of St. Louis for many years before the cession of the country to the United States in 1803, and the witness for Joseph Lacroix as to possession of this lot.

On the third day of March, 1825, Joseph Lacroix and Pierre Barribeau appeared before Hunt, United States recorder of land titles, at St. Louis, to prove up the cultivation and possession, prior to 1803, of their village lots and field lots in and belonging to St. Louis, pursuant to the act of Congress of the 26th of May, 1824, so as to perpetuate the evidence of their confirmations under the act of 13th June, 1812. (Rec. pp. 21 to 24.)

Joseph Lacroix and Pierre Barribeau were witnesses for each other before the recorder. The minutes and tabular abstract of confirmations of the United States Recorder of Land Titles show that on the first day of the opening of the commission, Joseph Lacroix and Pierre Barribeau appeared before the recorder, and proved up some village lots and these Grand Prairie field lots. (Rec. p. 28.) The Lacroix lot in the Grand Prairie is bounded north by Pierre Barribeau. Joseph Lacroix was called as a witness for Pierre Barribeau and testified as Louis Lacroix; but his name was subscribed as Joseph [his ⋈ mark] Lacroix. (Rec. pp. 67, 68.)

Pierre Barribeau's lot is bounded south by Joseph Lacroix in the tabular abstract of confirmations, and also in the minutes of Hunt, referred to in the deeds under which defendant, plaintiff in error, claims title. The error in the Christian name of Lacroix clearly appears, from the tabular abstracts of confirmations, and from the said minutes, to have been the error of Mr. Hunt, the recorder, who wrote *Louis* in the affidavit signed *Joseph* Lacroix, and by the same mistake entered Louis Lacroix as claimant of the field-lot in suit.

Joseph Lacroix used and claimed said lot after the United States purchased the territory down to the time of his death in

1831 (Rec. pp. 34, 35, 36), and his heirs at law conveyed by full warranty deeds to grantors of plaintiffs (Rec. pp. 41 to 51), who entered into possession and held the land until 1852, when the defendant entered as a trespasser upon the said lot under quit claim deeds from the heirs of St. Paul Lacroix, of St. Charles; and in 1856 plantiff brought suit in ejectment against defendant, and afterwards filed a petition in equity in aid of the suit at law, by order of the Supreme Court, so as to facilitate the introduction of testimony to show who was the person intended by the name of Louis Lacroix, confirmed by the act of 13th June, 1812, and the court found that Joseph Lacroix was the person intended.

The title passed to some person on the 13th of June, 1812, answering the following descriptions: 1st. An inhabitant of St. Louis before 1803. 2d. A cultivator of a field-lot in a common field belonging to St. Louis before 1803. 3d. A claimant by title or by cultivation before 1803, while inhabiting the village of St. Louis. 4th. A claimant who appeared before the recorder of land titles on the 3d of March, 1825, at St. Louis, to prove his cultivation.

The only question to be determined in this case is, to what person was the field-lot confirmed. The title had passed from the United States by the act of Congress of 13th June, 1812, to a person called Lacroix, who must answer the descriptive terms given in the acts of Congress.

No person named Louis Lacroix ever inhabited St. Louis before or after 1803, or ever cultivated a field lot in the Grand Prairie common field prior to 1803. The name of Louis Lacroix does not appear in the church records, or in the archives or records of the Spanish or United States governments. (Rec. pp. 55, 56, 57.)

The testimony and evidence from all sources show that Joseph Lacroix was the person who cultivated the field-lot in suit, and the same person who proved up his cultivation of said lot prior to 1803 before the recorder of land titles in 1825. (Rec. pp. 21, 29, 31, 34, 35, 36, 37, 38, 39, 40, 41, 64, 70.)

The suit was tried three times in the State courts — twice before juries and once before a judge — and on each trial the plaintiffs had a verdict and judgment that Joseph Lacroix was the person intended in the certificate of confirmation issued in the name of Louis Lacroix in 1825 by the said recorder. The last judgment by the judge of the State court was affirmed by the court at general term, and on appeal to the Supreme Court of the State, judgment was finally affirmed in favor of the plaintiffs, with damages for the detention of the property. From this judgment and decision of the Supreme Court of Missouri the defendant has sued out a writ of error from the Supreme Court of the United States to the Supreme Court of Missouri, and the plaintiffs have filed their motion to dismiss the writ of error for want of jurisdiction. The certificate of the presiding judge is not sufficient to give jurisdiction. (Rec. p. 100.)

PROPOSITION 1. — NO JURISDICTION.

The record in this case does not show that either one or any of the questions stated in the 25th section of the judiciary act arose in the State court, and was decided in that court as a question indispensable to the judgment in this case.

Both parties claim title to the field-lot in suit, under the same confirmation, made by force of the act of Congress of 13th of June, 1812 (2 vol. Stat. at Large, 748), and the question of fact determined in the State court is, that Joseph Lacroix was the person intended in a certificate of confirmation issued in the name of Louis Lacroix, under the act of 26th of May, 1824 (4 vol. Stat. at Large, 65). The latter act was supplementary to the former one, and was designed to furnish the confirmees, under the act of 1812, with the means of perpetuating the testimony of their possession, or of their cultivation, of lots prior to the 20th day of December, 1803, so as to enable the United States surveyors to survey and separate the private lots from the public domain and the lands reserved for schools.

The State court decided in favor of the validity of said acts of Congress, and that the title passed to a man named Lacroix on the 13th June, 1812, and that the certificate of confirmation

1831 (Rec. pp. 34, 35, 36), and his heirs at law conveyed by full warranty deeds to grantors of plaintiffs (Rec. pp. 41 to 51), who entered into possession and held the land until 1852, when the defendant entered as a trespasser upon the said lot under quit claim deeds from the heirs of St. Paul Lacroix, of St. Charles; and in 1856 plantiff brought suit in ejectment against defendant, and afterwards filed a petition in equity in aid of the suit at law, by order of the Supreme Court, so as to facilitate the introduction of testimony to show who was the person intended by the name of Louis Lacroix, confirmed by the act of 13th June, 1812, and the court found that Joseph Lacroix was the person intended.

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The State court decided in favor of the validity of said acts of Congress, and that the title passed to a man named Lacroix on the 13th June, 1812, and that the certificate of confirmation

issued by the recorder of land titles on the 3d March, 1825, pursuant to the act of Congress of the 26th May, 1824, was *prima facie* evidence of the fact that a Lacroix had cultivated said field lot, belonging to St. Louis, prior to the 20th of December, 1803, while he was inhabiting the village of St. Louis, and was confirmed, by force of said act of 1812, in his title; and that it appeared, from the minutes and the tabular abstract of confirmations, that a latent ambiguity existed in regard to the Christian name of Lacroix, and that *Louis* Lacroix, named in the certificate, meant *Joseph* Lacroix, who had cultivated the lot and had proved it up before the recorder (Rec. pp. 28, 65).

The State court applied the rule, "*Falsa demonstratio non nocet cum de corpore constat*," as stated by Mr. Greenleaf (1 Greenl. Ev. sec. 301), and supported by the authorities in England and the United States. (Thomas v. Stevens, 4 Johns. Ch. 607; Conolly v. Pardon, 1 Paige, Ch. 291; Smith v. Coney, 6 Vesey, 42; Jackson v. Stanley, 10 Johns. 137; Coke Litt. 3 *a*; Jackson *ex dem.* v. Goes, 13 Johns. 524; Jackson *ex dem.* Miner v. Boneham, 15 Johns. 226; Jackson v. Cody, 9 Cow. 140.) The State court further held that the certificate of confirmation of 1825 had special reference to the act of 1812, which is made part of the certificate by express recital, so that it is to *Louis* Lacroix, an *inhabitant* of St. Louis before 1803, who cultivated a field-lot in the Grand Prairie fields belonging to St. Louis, adjoining Pierre Barribeau's lot on the south, prior to 1803, and that the parol proof shows who this Louis Lacroix is, by proving to a certainty that the *inhabitant* of St. Louis and the *cultivator* of said field-lot, before 1803, was Joseph Lacroix, and that he was the man who made the proof before Hunt, the recorder, in 1825, and to whom the certificate of confirmation was delivered.

The confirmations by the act of 1812 were made *en masse*, and it is the duty of the courts to ascertain from the evidence the individual confirmed in any given case. (Glasgow and Taylor v. Hortez, 1 Black. 595, in point.)

The decision of the State court on this question is conclusive, and the construction, even, of the said acts of Congress, is not

drawn in question. This court has no power to take jurisdiction on a writ of error from a State court, unless that court *has decided against the validity of an act of Congress, or some other question specified in the 25th section, "and have come to the very decision of that question as indispensable to that judgment."* (Crowell v. Randall, 10 Peters, 392, on review by Mr. Justice Story of all the cases prior to that date—1836.)

So, also, it was held in the case of Armstrong v. Treasurer, &c. (16 Peters, 281, 285), that "it must appear from the record that the question was necessarily involved in the decision, and that the State court could not have given the judgment or decree which they passed without deciding it."

In the case of The Commercial Bank v. Buckingham's Ex'rs (5 How. 341), the same rule is stated by Mr. Justice Grier, who delivered the opinion of the court. See William v. Carpenter, 42 Mo. Rep. 340, which is the case on which this writ of error issued.

The only question in this case is, whether the confirmation of 1812 was to Joseph or Louis Lacroix. Joseph Lacroix cultivated this field-lot before 1803, and was confirmed by the act of 1812 by force of the parol evidence alone. (Rec. pp. 29, 30, 31.) (Guitard v. Stoddard, 16 How.)

The testimony of Barribeau on 3d March, 1825, (Rec. pp. 21, 65,) authorized the certificate of Hunt, which was *prima facia* evidence of a confirmation to Lacroix by the same act of 1812; but the certificate having been issued in the name of Louis Lacroix, the parol proof was introduced to show that Louis never lived in St. Louis; that he died in 1800; that Joseph Lacroix was the person who proved up the claim before the United States recorder on the 3d March, 1825, and was entitled to the benefit of the certificate of 1825, and to the confirmation of 1812.

The determination of this question of fact does not require any construction of the acts of Congress, or any decision that would invalidate either act. Both parties assert the validity of

said acts of Congress, and the State court held them to be valid, (Rec. pp. 3, 4, 94,) and found as a fact that Joseph Lacroix was the person confirmed under the act of 1812, and that Louis, who had died in 1800, who was never an inhabitant of St. Louis, and who never cultivated this field-lot, was not the person confirmed. The State court, therefore, decided in favor of the validity of the acts of Congress, and found as a fact that Joseph Lacroix was the man who answered the descriptions contained in the act of 1812.

It is clearly proved by the authorities that the supreme federal court can take no jurisdiction in such a case as this. (Curtis Comm. § 224.) The following cases are directly, in point, against this court assuming jurisdiction in this case: Matthews v. Lane, 7 Wheat. 164; Erwin v. Lowry, 7 How. 172; Lytle v. Arkansas, 22 How. 203; Gibson v. Chouteau, 8 Wallace).

By examining the record, it will be seen that trial was had on questions of fact and local law, and practice in the State courts of Missouri, and no decision was made against the validity of any act of Congress. The certificate of the presiding judge (Rec. p. 100) does not meet the question. The defendant was defeated; not because of the invalidity of the acts of Congress, granting this lot to an inhabitant, cultivator and possessor, living in St. Louis before 1803, but because Louis Lacroix, under whom defendant claimed, never existed as an inhabitant of St. Louis, and that Joseph Lacroix did exist, and was the man confirmed for the lot in suit, by the mistaken name of Louis, which appears to be a latent ambignity on the face of Recorder Hunt's minutes and list of confirmations. (Rec. pp. 28, 68). (Smith v. Hunter, 7 How. 738; approving case of Armstrong v. Treasurer of Ohio, 16 Pet. 285).

2d. *The defendant has no good defense on the merits, if this court has jurisdiction over this writ of error.*

The opinion of the Supreme Court of Missouri in this case (42 Mo. Rep. p. 340,) is so clear, learned and logical, that it ought to be entitled to great weight. It is as follows:

Williams vs. *Carpenter*. HOLMES, Judge, delivered the opinion of the court.

This case has already been twice before this court: 28 Mo. 458; 35 Mo. 52. There are some preliminary questions to be disposed of. It is made to appear, by the record, that previous to the last trial the plaintiff asked leave to file an amended petition, and leave was refused. This amended petition contained certain statements of facts, looking to equitable relief, combined and blended in the same count, with a cause of action in ejectment under the statute, or rather statements of facts which were more properly matters of evidence. The plaintiff does not complain that there was any error in refusing to allow this amended petition* to be filed. The case appears to have been tried as an action of ejectment on the original petition, and so it will be considered here. (Billou v. Larimore, 37 Mo. 386; Peyton v. Rose, 41 Mo. 261.)

The case appears to have been tried before the court sitting as a jury. Both parties were present, and submitted the cause to the court on the evidence. It does not appear that either party demanded a jury. It may be presumed that the right of trial by jury was waived. (Vaughn v. Scade, 30 Mo. 600; Brown v. Hann. & St. Jo. R.R. Co., 37 Mo. 299.)

The verdict contains a recital of the particular facts found to have been established by the evidence, but it is essentially nothing more than a verdict for the plaintiff on the issues in the case, with an assessment of the damages and monthly value of the premises; and judgment is given for the possession, damages, monthly value, and costs.

The verdict rendered may be considered as a finding of the particular facts from which, as facts proved, the court sitting as a jury had inferred and found for the plaintiff the main fact in issue, namely: that the plaintiff was entitled to the possession of the premises in controversy.

The more material fact in dispute under the issue would seem

* Application was made by plaintiff's counsel, at the second trial, to file the amended petition referred to, and leave was refused. At the last trial leave was obtained and the amended petition filed.

to have been shortly this: whether it was Joseph Lacroix, under whom the plaintiff claimed, who appeared before the recorder of land titles, in 1825, as the claimant of the lot in question, and proved this claim, and was the identical person and claimant to whom the certificate of confimation was in fact issued by the name of Louis Lacroix.

The sufficiency of the evidence to warrant the finding, if extrinsic and parol evidence were admissible at all, for the purpose for which it was offered, can scarcely admit of question. It was enough to justify a moral conviction in the mind of the jury of the truth of the matter found. It may be said that it was sufficient to raise an irresistible presumption of the truth of that matter. We cannot say that the verdict was not warranted by the evidence. We do not understand that error is claimed on this ground.

We come, then, to the question whether extrinsic evidence was admissible at all with reference to the person named in this certificate. The former decisions in this case are first to be considered. In the first decision the majority of the court appear to have rested the reversal of the judgment upon the state of facts presented on that record. The opinion delivered by Scott, J., shows that the case had been tried "on the theory that Louis and Joseph Lacroix were different persons," there being evidence that "there were two such individuals in St. Louis." It was said that the circumstances of the case did not "warrant the application of the principle that by parol evidence one may show that he is the person named as a grantee or patentee." The ground of the decision appears to have been that, on the state of facts before the court, Joseph Lacroix could not be permitted to prove by extrinsic evidence that he was "the person intended," or was "the person for whom the bounty was intended," and thus take away the title from Louis, in whom it had been vested by the instrument, and transfer it to Joseph, in whom it had not been vested. The stress was laid upon the *intention*. This is the principle that is applied to wills: that parol evidence is inadmissible for the purpose of proving that a thing in *substance* different from that described was *intended*, or of changing the person described, or, generally, of proving *intention*. (Wigram on

Wills, 89–92.) The position was illustrated from the cases of patents. It was conceded that parol evidence would be admissible to prove that *George Housman* and *George Hosmer* were the same person, but not to prove that a grant to the former, a real person, was intended for the latter, another person. Richardson, J., granted this point, and concurred in the reversal, on account of the admission of improper evidence; but expressed the opinion that, "if Joseph Lacroix was the person who appeared before the recorder and made the proofs, and the recorder intended to give him the certificate of confirmation, but by a mere mistake wrote the name of *Louis* instead of *Joseph*, then Joseph or his representatives, on showing these facts, ought to be permitted to take the benefit of the certificate of confirmation. We think it may fairly be inferred that the state of the case here supposed was not distinctly presented on that record.

It appears that the second decision was placed upon precisely the same ground as the first, and was predicated on the same state of facts; and it was said, "this judgment and the former decision cannot stand together." Upon that state of the case, and upon that ground, we should probably entertain the same opinion and decide the case in the same way.

The case, as now presented before us on this record, is certainly quite different. The fact is found, on ample evidence, that there were not two persons — inhabitants of the town of St. Louis, claiming a lot in the Grand Prairie common field of St. Louis, upon inhabitation, cultivation, or possession, prior to 1803, before that date or afterward — one named Louis Lacroix, and the other Joseph Lacroix, either of whom might have been confirmed in his claim, or might have proved this claim and been entitled to this certificate; but it was proved and found that the man Louis Lacroix, under whom the defendant claims, was an inhabitant of St. Charles, and died long before this claim was proved, and that he never had been an inhabitant of the town of St. Louis, nor a claimant of a lot in the Grand Prairie common field of St. Louis, within the meaning of the acts of Congress. It is thus clearly shown that he never came within the class of persons contemplated by those acts. It does not appear that, during his lifetime, he ever pretended to have such a claim. The idea seems to have

to have been shortly this: whether it was Joseph Lacroix, under whom the plaintiff claimed, who appeared before the recorder of land titles, in 1825, as the claimant of the lot in question, and proved this claim, and was the identical person and claimant to whom the certificate of confimation was in fact issued by the name of Louis Lacroix.

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The case, as now presented before us on this record, is certainly quite different. The fact is found, on ample evidence, that there were not two persons — inhabitants of the town of St. Louis, claiming a lot in the Grand Prairie common field of St. Louis, upon inhabitation, cultivation, or possession, prior to 1803, before that date or afterward — one named Louis Lacroix, and the other Joseph Lacroix, either of whom might have been confirmed in his claim, or might have proved this claim and been entitled to this certificate; but it was proved and found that the man Louis Lacroix, under whom the defendant claims, was an inhabitant of St. Charles, and died long before this claim was proved, and that he never had been an inhabitant of the town of St. Louis, nor a claimant of a lot in the Grand Prairie common field of St. Louis, within the meaning of the acts of Congress. It is thus clearly shown that he never came within the class of persons contemplated by those acts. It does not appear that, during his lifetime, he ever pretended to have such a claim. The idea seems to have

originated with his heirs. Parol evidence was admissable by all the authorities to show that he was not the person named in the instrument, but an impostor. It has been so held even in the case of a patent. (Jackson v. Stanley, 10 Johns. 133 ; Jackson v. Goes, 13 Johns. 518.) It is certain that he could take no benefit by this certificate. It conferred no right on him, and the defendant is left standing on a bare possession, showing no other title.

The next question is whether the certificate could be made available to Joseph Lacroix by extrinsic evidence. It is not a question of the intention of the government or of the recordor, *dehors* the instrument. It is simply a question of the identity of the person Joseph Lacroix with the person named and described in the certificate. The ambiguity arises only when the instrument comes to be applied to the person. The proof ascertains that there was no other person within the class to whom it might have been given but this identical Joseph Lacroix. It shows further, and irresistibly, that it was this man Joseph Lacroix who actually appeared before the recorder as the claimant, and made proof of this claim, and received the certificate, and whose name was mistakenly written Louis, instead of Joseph, in the minutes, the registry, and the certificate. There were other words of description of the person in these documents besides the bare name. The minutes read "Louis Lacroix, claiming one by forty arpents, a field-lot in Big Prairie, St. Louis, bounded," etc. ; and the certificate reads that, under the acts of Congress, Louis Lacroix "was confirmed in his claim to a tract of land of one by forty arpents, situated in the Grand Prairie common field of St. Louis," with a survey of the boundaries. Now, strike out the word "Louis," and the question becomes simply this: whether enough remains to admit of the application of the principle *falsa demonstratio non nocet*. It is not merely Louis Lacroix, but the man Lacroix who was claiming this lot before the recorder on that day, and causing it to be proved, and to or for whom this claim was registered as proved, and this certificate delivered. This was enough, we think, to let in the proof that was made. We think the extrinsic evidence was admissible, both on this principle and on the principle of identifying the person named. The authorities, we con-

ceive, fully justify this position. (Price v. Page, 4 Ves. Jr. 680; Beaumont v. Fell, 2 P. Will. 140; Jackson v. Goes, 13 Johns. 578; Still v. Hoste, 6 Madd. 123; Miller v. Travers, 8 Bing. 248; Hiscocks v. Hiscocks, 5 Mees. & W. 370; Jackson v. Cody, 9 Cow. 147; Tucker v. Seamen's Aid Society, 7 Met. 188; Tudor v. Terrell, 2 Dana, 47; Abbott v. Massie, 3 Ves. 148; Thomas v. Stevens, 4 Johns. Ch. 370; Parsons v. Parsons, 1 Ves. Jr. 266; 1 Greenl. Ev. § 291, *n.* 4; 2 Phil. Ev., Cow. & H. notes, 4th ed. 761, 770–3; 1 Spence's Eq. Jur. 539.)

The case of Beaumont v. Fell, so far as it admitted the testator's declarations of intention, has been overruled; but so far as it sanctioned the admissibility of proper extrinsic evidence for the purpose of identifying the person named, when the words of the instrument came to be applied to the person, it seems to have been approved by nearly all the later authorities.

The matter is properly to be considered with reference to the nature of the instrument. It is peculiar to the land titles of this State, under the acts of Congress. It has been the policy of the courts to uphold these titles, and to give to the documentary evidence issued by the government under these acts all the effect that can reasonably be given to it, consistently with the rules of law and the general principles governing the admissibility of evidence. Precedents from other States furnish only remote analogies. General principles may serve as a guide. The cases refer to patents, deeds, wills, written contracts, or depositions.

The certificate may be likened, in some particular respect, to either of these things, but, strictly speaking, it is neither one nor the other of them. We are to consider not what it is like, but what it is. It is simply a certificate in writing, under the hand of the recorder, issued by statute authority. It does not convey title; it is merely *prima facie* evidence of the existence of certain facts at a former date, and it may be rebutted or disproved by other competent evidence. (Gurno v. Janis, 6 Mo. 330; Montgomery v. Sandusky, 9 Mo. 705; Biehler v. Coonce, 9 Mo. 343; McGill v. Somers, 15 Mo. 86; Joyal v. Rippey, 19 Mo. 660; Soulard v. Allen, 18 Mo. 590; Soulard v. Clark, 19 Mo. 570.) When offered in evidence, it speaks like a witness or a deposition. It is not of the nature of best evidence, nor is it

the only admissible evidence. The same facts may be proved by living witnesses, or by other competent evidence. The registry of certificates has been held equally admissible to prove the same facts. Here the other evidence fails to prove all the necessary facts without the certificate. In such case it was regarded by Scott, J., as "the highest evidence of title which could emanate from the government;" no patent was required, and he said the title was "evidenced by the certificate of confirmation." The title passed by the act of 1812, *proprio vigore*; and unless this document be available the party loses his title. In its effect, therefore, it is equivalent, in this case, to a patent. Yet it is not a patent, nor a record on which a *scire facias* would lie. If the plaintiff can show that he was the person named and designated, why should he not have the benefit of this instrument? If a deposition had contained the same mistake, there could be no question but that another witness or deposition would be admissible to correct the error.

As presented on this record, it is not the case of two claimants, of the same or different names. It is not the case of two different persons, both falling within the class contemplated, one of whom is correctly named and described, and the other not. It is not the case of taking away the title from the person in whom it is vested by the conveyance, and transferring it to another person in whom it is not vested by the conveyance as it is written. We cannot doubt that extrinsic evidence was admissible, when this document was offered in evidence, to show, first, that the man Louis Lacroix, under whom the defendant claimed, was not the person named and described; and, second, to show further that the man Joseph Lacroix, under whom the plaintiff claimed, was in fact the person named and described in the instrument by the name of *Louis* Lacroix, and by his further designation as the claimant of this lot in the Grand Prairie common field of St. Louis, before the recorder in 1825, under the acts of Congress, who had made proof of his claim to the satisfaction of that officer, and had received this certificate, which certifies the fact that he was confirmed in his claim by the act of 1812. As it was said by Scott, J., in the case of The City of St. Louis v. Toney (21 Mo. 255), it is "the right and claim to a lot inhabited,

cultivated, or possessed, prior to the 20th December, 1803," that is confirmed by that act. None but a claimant of such a claim came within its purview. The verdict finds that the claimant was Joseph Lacroix.

The question of the admissibility of "Hunt's minutes" has been the subject of decision or comment in several cases. (Gamache v. Pequignot, 17 Mo. 310; City v. Toney, 21 Mo. 255; Clark v. Hammerle, 27 Mo. 71; 36 Mo. 639.) It has been held that they should not be read, against objection, as a deposition to prove the facts testified to by the witnesses therein. They do not appear to have been read for this purpose in this case. No exception is taken on that account. An attentive examination of the case will show that the admissibility of these records in any case must depend upon the general principles of the law of evidence governing the relevancy or competency of the evidence on the issues to be tried between the parties. Like any other record or official document, it must be admissible to show what it contains; but whether or not what is contained is relevant or competent on the issues in the case, must be determined by the general rules of evidence. In Gamache v. Pequignot these minutes and documents relating to the claim were excluded, on the ground that, as the recorder had omitted to enter the claim in his registry of certificates or list of claims proved, the law would draw the conclusion that the claim had not been proven to his satisfaction. There is no question here but that this claim of Lacroix had been registered as a claim proved and confirmed. In the minutes, in the registry, and in the certificate, the claim runs in the name of Louis Lacroix. The minutes show that a person named Joseph Lacroix was present before the recorder on the day when this claim was proved, and signed his name *Joseph Lacroix* to his deposition as a witness proving the claim of Pierre Barribeau (the witness that proved this claim), in which deposition the recorder had written the name of the deponent as *Louis Lacroix*, and that the boundaries of the two claims of Lacroix and Barribeau called for each other on the north and south. We are of the opinion that this context of the record was relevant and competent evidence on the issues in this case; it was properly to be weighed by the jury for what it was worth in connection with the

other testimony. It appears that this document was admitted to be read to prove "notice of the claim, and for no other purpose," and that it was wholly excluded in the verdict rendered. The error, whatever it may have been, was an error against the plaintiff, of which the defendant cannot complain.

The other evidence, and especially the testimony of A. H. Evans, with this record before him, furnished proof that might well be deemed satisfactory, if not wholly irresistible, that the person who appeared before the recorder on that day, in company with Barribeau, and caused this claim to be proved by him as witness, and who signed his name *Joseph* to the deposition running in the name of *Louis* in support of Barribeau's claim, on the same day, was the man Joseph Lacroix, and that it was this person and no other who claimed and proved this lot and received this certificate, in which his name was written *Louis* Lacroix by mistake. This proof must be held sufficient, unless the name is to be regarded as more important than the person designated — words as more important than the thing signified — *nihil facit error nominis, cum de corpore constat.*

The judgment will be affirmed. The other judges concur.

ANALYSIS OF PROPOSITIONS IN CASE.

1st. The title to the field-lot sued for first emanated from the United States on 13th of June, 1812, and passed to the inhabitants of St. Louis, *en masse*, according to their respective inhabitations, cultivations, or possessions of such lots, prior to the 20th of December, 1803. The grant was *in presenti*, taking immediate effect on the 13th of June, 1812. The grantees were to be ascertained, by proof in a court of justice, of the identity of each person confirmed by the act of 1812. (2 Stat. at Large, 748; Guitard v. Stoddard, 16 How.; Glasgow and Taylor v. Hortez, 1 Blackst. 554, in point.)

2d. The evidence of the cultivation could be also shown by a certificate of confirmation, on proof given before the recorder of land titles, under the act of 26th of May, 1824. (4 Stat. at Large, 65.) This act perpetuated the testimony of the culti-

vation of such inhabitant of St. Louis before 1803. It does not convey title; it is merely *prima facie* evidence of possession in favor of the inhabitant of St. Louis who cultivated the lot, and may be rebutted. (Gurno v. Janis, 6 Mo. 330, and cases cited *supra.*) The title passed in 1812 to some inhabitant who cultivated the lot before 1803, and this confirmee was to be ascertained by proof in court. (See cases under 1st Anal. Prop.)

3d. Joseph Lacroix, under whom plaintiffs, defendants in error, claim title, is shown by parol proof to have cultivated this lot before 1803, and to have made the proof on the 3d of March, 1825, before the recorder. (See Rec. Ev. Ch. Sanguinette, pp. 29 to 31, and Ev. A. H. Evans, p. 21.)

4th. Plaintiff and defendant both claimed under the act of 13th of June, 1812, and the only question of fact is, was the confirmation to Joseph or to Louis Lacroix. Three elaborate trials have not developed any other question of fact. The certificate of possession issued in the name of Louis Lacroix, in 1825, but it appears on the face of the recorder's minutes that this was a latent ambiguity, meaning Joseph Lacroix, who appeared and made the proof before the recorder. No person named Louis Lacroix ever lived in St. Louis, and the Louis Lacroix who lived in St. Charles and under whom Carpenter claims title, died in 1800; and the proofs are clear that Joseph Lacroix did cultivate this lot before 1803, and proved up his cultivation before the recorder in 1825.

5th. Joseph Lacroix had always claimed this lot before and after 1803, up to his death in 1831, and his heirs sold it by warranty deeds, for full consideration, to Williams' grantors, who entered into possession under their deeds with tenants and enclosures. Carpenter entered upon that possession under quit claim deeds in 1852, as a trespasser, and Williams sued him in 1856.

6th. Williams has not been guilty of laches. He does not ask the court to correct the error on the minutes of the recorder further than the rules of evidence in cases of latent ambiguity

or *falsa demonstratio*, etc., will permit. The court below had the clear right to prevent Carpenter from using the certificate in support of a fraudulent claim. Until the said Carpenter set up his fraudulent claim in 1852, the claimants under Joseph Lacroix could not bring an action. The heirs of Louis Lacroix were not in fault for the clerical error of the recorder in 1825. When the possession of Joseph Lacroix's grantees was invaded by the fraudulent claimants, the right of action arose, and the statute of limitations determines the period of the bar. (Bollinger v. Chouteau, 20 Mo. 89; Lytle v. Arkansas, 22 How. 235; Lindsey v. Hawes *et al.*, 2 Black, 554: 9 How. 314; Cunningham v. Ashley, 14 How. 377; Wright's Heirs v. Christy's Heirs, 39 Mo. 125; McNair v. Lott, 34 Mo. 285; Gibson v. Chouteau, 39 Mo. 587; 8 Wall. S. C.; Magwire v. Tyler, 8 Wall. —.)

7th. The only question remaining in the case, on the merits, is to whom was the confirmation made on the 13th June, 1812? This must be determined by proof *dehors* the confirming act, which was to the inhabitants *en masse*, without names for either of them. (Glasgow & Taylor v. Hortez, 1 Blackst. 554.) The rule *falsa demonstratio non nocet* also applies. (See cases cited.) The error in the recorder's certificate cannot affect the confirmation if the person confirmed can be ascertained by other evidence. (Guitard v. Stoddard, 16 How. —.) This has been done in the court below on three trials.

8th. This court has no jurisdiction to ascertain the fact whether Joseph or Louis Lacroix was confirmed. It is a question local to the State courts, and their decision is final.

BRITTON A. HILL,

For Defendants in Error.

WILLIAMS, GRAY & KELLOGG,

In propria personæ.

St. Louis, March 14th, 1870.

BRIEF

FOR

PLAINTIFF IN ERROR.

IN THE

SUPREME COURT OF THE UNITED STATES.

(No. 81) DECEMBER TERM, 1869.

CARPENTER *vs.* WILLIAMS ET AL.

GLOVER & SHEPLEY,

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December Term, 1869.

CARPENTER
vs.
WILLIAMS *et al.*,
Defendants in Error.

STATEMENT OF THE CASE.

Williams and others claim title in this suit to twelve (12) arpents off the eastern end of a tract of 1x40 arpents in the Grand Prairie common fields of the village of St. Louis. Williams commenced the suit December 2, 1856; and Kellogg & Gray procured their title from him before the last judgment in the Circuit Court, and made themselves parties. The suit of Williams as originally commenced was a simple ejectment (Record, p. 3). But this cause of action was abandoned October 23, 1865, when Williams filed his amended petition, setting up equities and praying general relief, possession, etc. (Record, pp. 5, 6, 7, 8 and 9). The amended petition states in substance that the land in dispute was proved [confirmed] in the name of *Louis* Lacroix, when,

in fact, *Joseph* Lacroix was the person intended; that Recorder Hunt took proof of *Joseph's* right, but made a mistake in the name of the claimant, or by accident wrote *Louis* instead of *Joseph*, and the object of the suit as amended was to reform the confirmation, correct the supposed mistake, and obtain a decree in favor of the persons claiming under *Joseph* Lacroix for the title which the defendant, Carpenter, had procured from the heirs of *Louis* Lacroix. The amended petition, setting up an equitable title, was filed after the Supreme Court of Missouri had decided Williams had no legal title, and could only recover on showing an equity, if at all.—28 Mo. 454; 35 Mo. 52.

The answer of Carpenter denied all the equity in the amended petition. There is in the record no evidence of any proofs taken by the Recorder, nothing to show what was the testimony of any witness who appeared before him, and no proof of any entry made by the Recorder, except that he confirmed the tract, part of which is in controversy, to Louis Lacroix. There is evidence in the record that Joseph Lacroix claimed land in the Grand Prairie, but it fails to identify this lot. There is evidence that Louis Lacroix also claimed land there. The minutes of Recorder Hunt, which the petition alleged to be founded in mistake, were put in evidence by plaintiffs below (Record. pp. 65, 66, 67, 68), and witnesses were examined as to their appearance, handwriting and contents. (Evans' and Mosberger's te-timony, pp. 21 to 24.) But they were all excluded afterwards, (Record, p. 19) and with them, the plaintiff in error sinsists, was excluded all the oral testimony in regard to them.

The Circuit Court rendered a decree for defendants in error, which was affirmed in the Supreme Court of Missouri.

POINTS AND AUTHORITIES FOR CARPENTER, THE PLAINTIFF IN ERROR, BY GLOVER & SHEPLEY.

I. The plaintiff in error claimed his title under the confirmation of the Recorder, an act done by authority of the United States, and the decision of the Supreme Court of Missouri was adverse to that title. The confirmation purported to vest title in Louis Lacroix, and the decision destroyed that title, adjudging that the United States officer, by his confirmation, vested no right in Louis Lacroix. This court, therefore, has jurisdiction of the cause. Here is both an error in law, and in fact, charged upon the Recorder to nullify his decision. It is the duty of this court to see that justice is done in such a case. 22 How. 193, Lytle v. Arkansas; 1 Black. 195, Magwire v. Tyler et al.

II. The act of the Recorder being assailed on the ground of accident and mistake, and this court having jurisdiction to sustain the title of Louis Lacroix, if valid, the equitable doctrine pertaining to accident and mistake is necessarily drawn into consideration. No mistake, no accidental error is shown to have been committed by the Recorder; legally speaking, no attempt was made to show one. It was a curious proceeding. It was something like a suit (if such a thing could be) to reform the evidence of a witness alleged to have been erroneously taken down by a notary. If a court could make such a decree, three facts should clearly

appear: 1. What the witness did say. 2. That a different statement was taken down. 3. That the Recorder carried the mistake into his judgment. But to undertake to prove a mistake in the Recorder's proceedings, not by what transpired before him, but by showing the Recorder's judgment, was erroneous when compared with evidence not before him, is an absurdity.

The proof produced by defendants in error to show a mistake in the action of the Recorder, conceding all that is claimed for it, is this: That Joseph Lacroix owned and cultivated a lot somewhere in the Grand Prairie, and therefore the Recorder must have made a mistake when he certified that Louis Lacroix claimed and proved before him that he, Louis, owned and cultivated this lot. It is alleged that Joseph Lacroix appeared before the Recorder in 1825 and proved that he cultivated and claimed this identical lot. But there is no evidence in the record that he made or attempted to make such proof. Mr. Evans is the only witness (record p. 21) who speaks of this subject—he is evidently not certain that he knew Joseph Lacroix by that name. He speaks several times of Joseph Lacroix as if he knew him, but much doubt is thrown upon this point when he says: "I saw Lacroix (record p. 22) and Barribeau proving their lots. * * * * *As far as I recollect their names*, they were called Jo. Lacroix and Pierre Barribeau. It is a long time ago and *we generally called them by their sur-names.*" Mr. Evans thinks he heard these men testify, but is not at all certain—may have only read the minutes. The point is that Mr. Evans did not pretend to know what the witnesses

said, nor how Hunt took their statements down, nor did he hint at any mistake committed by the Recorder.

But this is all the record contains on the question of mistake. Evans' testimony is as vague as possible. A mistake should be made out by clear testimony. Recorder Hunt certified in 1825, that proof was made before him of the title of Louis Lacroix. Now when it is alleged that Mr. Hunt made a mistake in writing down the name, we must insist that that allegation is not proved by showing that Joseph Lacroix was the owner of the land; yet this is all that has been attempted.

III. There was no equity in the amended petition. The claim was in itself stale and out of date; or we may say it was not proved by the evidence, or that, by the circumstances under which it was presented, the lapse of time, the death of all the original actors, a conclusive presumption of injustice rested upon it. This act was done by the Recorder, March, 1825. Never in the lifetime of Joseph Lacroix was anything heard of a mistake. No possession was ever had, or title set up, by or under Joseph Lacroix from 1804 till near the commencement of this suit.

And this suit was brought by a speculator who *discovered the mistake long years after Joseph Lacroix was in his grave.*

The present suit was brought thirty-one years after the alleged mistake. The amendment to correct the mistake was forty years from its date. It makes no difference that there was no adverse possession. If the mistake insisted upon was made, a title was vested in Louis Lacroix in violation of

Joseph's right, and the cause of action was perfect and immediate. It was not necessary that Louis should enter on the land adversely. This may be true in regard to ejectment and other mere possessory actions, but it is not true of actions for deceit, specific performance, rescission, or to enforce a trust or reform an instrument.—1 Hill Ch. 113, Eigelberger v. Kibler; 3 Bligh, 9–12, Whalley v. Whalley; 18 Pa. St. R. 22, Hamilton v. Hamilton's Exr.; 4 Yeates, 109, Jones v. Conoway; Cooke (Tenn.) 437, Mayfield v. Simondson; 5 J. J. Marsh. 154–161, Finley v. Harrison; 3 Maryl. 407–8, Young v. Mackall; 2 Story Eq. § 1521, *n.* 2; 7 Mo. 610.

Joseph Lacroix could have sued in 1825, and did not. The statute immediately commenced and ran on for more than forty years as against this proceeding to correct a mistake.—13 Mo. 159, Smith v. Newby; 12 Mo. 238, Lander v. Perkins; 2 Story Eq. § 1028; 39 Mo. 21, Brantt v. Howard; 3 Met. 390, Clark v. Swift; 1 Bibb, 255, Brink v. Brink; 4 Dana, 200, Taylor v. Bates; 4 Verm. 492, Collard v. Tuttle.

If the statute did not run till the mistake was discovered, which we may concede—2 Scho. & Le Froy, 632–33, Hovendon v. Annesley; 2 Young & Cole, 60, Brookbank v. Smith; 3 Dess. 239, Craft & Hibber; 3 Leigh, 729, Shields v. Anderson; 1 Watts, 401, Pennock v. Freeman; 6 Yeager, 69–73, Haywood v. Marsh—the conclusion under the pleadings is, Joseph Lacroix had notice of the mistake alleged at the time it took place. Every person is presumed to know the contents of his own deeds. If not, he must aver and prove the contrary. As nothing is stated as to when the pretended

mistake was discovered, the presumption is it was known in 1825.—3 How. 333, Oliver v. Piatt; 1 Gillman, 330–1, Moore v. Hunter; 2 Ashmead, 312, Scott v. Burton; Cooke (Tenn.) 183, Shelby v. Shelby; 7 J. J. Marsh. 455, Carneal v. Parker; 5 Blackf. 7, Jenkins v. Brewitt; 4 Hawks, 372, Bruce v. Child; 2 McChord's Ch. 112–118, Westbrook v. Horberon; 3 Ala. 352, Steele v. Kinkle; 1 Edwards Ch. 347, Bertine v. Varian; 2 Porter, 58–74, Hatfield v. Montgomery; 1 Jac. & Walk, 66–7.

If Joseph Lacroix had held the legal title it would have given him constructive possession; but the legal title was in Louis Lacroix.—8 Cranch, 232, Green v. Liter.

So that up to the commencement of the suit in 1856, no possession had been in Joseph Lacroix for thirty-one years. In 1865, when the amended petition was filed for relief in equity, the former petition was abandoned.—R. S. 1865, p. 670, § 13; 28 Mo. 46, Basye v. Ambrose; 4 Munf. 181, Gray v. Berryman; 3 Iredell Ch. 535, Chustmoss v. Mitchell; 1 McLean, 1, Holmes v. Trout; 7 Peters, 171, Holmes v. Trout; 6 Peters, 61, Miller v. McIntyre.

The statute of Missouri of 1825 barred a real action in twenty years—p. 511.

The statute of 1847 reduced the time to ten years.—(Session Acts 1847, p. 94.) The statute of 1849, borrowed from New York (Voorhies Code of 1864, p. 99, §97,) fixed a positive statuary bar to all bills for relief in ten years, (Sess. Acts of Missouri, 1849, p. —,) and this regardless of adverse possession.—3 Barb. Ch. 202–3, Spore v. Wells; 30

Barb. 178, Roberts v. Sickles; 25 New York, 199–200, Bruce v. Tilton.

No doubt can be entertained that the statute of limitations which would bar the legal title would also bar the equitable title if that was put in suit under like circumstances. But we are not now invoking the statute of limitations, we are insisting that the claim of defendants in error was stale and out of date; that the lapse of time, death of all the original actors, and the long unexplained silence on the principles of equity, was an answer to it.—Story Eq. Pl. p. 618, § 756, *a.*; 6 Wheat. 492, Prevost v. Gratz; 1 McLean, 147, Piatt v. Vattier; 9 Peters, 405, Piatt v. Vattier; 1 Cox Ch. 149, Bonny v. Redgard; 17 Vesey, 97, Berkford v. Wade; 4 How. 561, Michaud v. Girod; 1 J. Ch. 46, Ellison v. Moffat; 12 Peters, 254, Jenkins v. Pye; 1 Paige, 100, Ward v. Bokkelin; 1 Dana, 278, Fenwick v. Macey; 2 Scho. & Lefroy, 637, Hovenden v. Annesley; 5 J. J. M. 581, Buford v. Cox; 9 Dana, 91 Hunt v. Hamilton; 9 Leigh, 393, Atkinson v. Robinson.

That lapse of time and death of all the actors will bar an action is certain. But the exact period of time is not fixed. It has relation, however, to the period mentioned in the statutes of limitation. Hence we have alluded to those statutes in Missouri. In New York, where the statutory bar was ten years, a claim was deemed stale in fourteen years.—3 Barb. Ch. 202, Spore v. Wells.

IV. The defendants in error felt this defect in the nature of their case, and attempted to counteract it. They inserted

in their amended petition that Joseph Lacroix and heirs were in possession from 1825 to 1848, of which allegations there is no proof. They also contended that the suit is an action at law, that the *amended petition was never filed, and the cause was tried on the original petition.* The Supreme Court of Missouri was induced to take this view.—42 Mo. p. 340, Williams v. Carpenter. That court, after stating that the amended petition was not filed, says: "*The case appears to have been tried as an action of ejectment on the original petition, and so it will be considered here.*"

Whereas the amended petition was filed and was answered by the plaintiff in error, (Record pp. 5 to 18 inclusive,) and on it the case was tried.

V. The practice in Missouri since the Code of 1849 is to try by the court without a jury causes which prior to that code were chancery suits just as they were tried before.—28 Mo. 114, Morris v. Morris ; 28 Mo. 320, Conran v. Sellew ; 28 Mo. 129, Bray v. Thatch ; 31 Mo. 226, McCullough v. McCullough—and this cause was so tried.

This suit was tried in the Circuit Court as a suit in equity and not as an ejectment; no instructions were asked by either party, an indispensable step to taking up a common law appeal, and in the decision the Judge "*orders and decrees as follows:*"

VI. The testimony received by the Circuit Court and on which the decree was procured annulling the title granted to Louis Lacroix, was illegal and incompetent, being hear-

say, and after all failing to show a title in Joseph Lacroix to the particular land in dispute. This point refers to the statement of the witness, Marie Guibor, (record p. 35,) what she had heard her father and others say, and similar statements by Aug. Guibor (record p. 36). By no other evidence can a title in Joseph Lacroix to the lot in dispute be pretended. Unless Joseph Lacroix had some title to the land in dispute, neither he nor those claiming under him could have a standing in court to correct any mistake about it.

A village lot can only be held under the Act of June 13, 1812, by *inhabitation or possession.* A common field lot can only be held under that Act by *cultivation.* The villagers resided in the village and not in the common fields. No one had a house in the common fields. No common field lot was ever confirmed except on ground of *cultivation.* And certainly there is no trace of cultivation by Joseph Lacroix of this lot. See 16 How. 495, Guitard v. Stoddard, for the uses made of these lots in Spanish times; see also Gamache v. Piquequot, 17 Mo. 325 and 11 Mo. 183–5, Page v. Scheibel. There is as much evidence of title in Louis Lacroix, independent of the paper title as in Joseph Lacroix. But if Louis had none, Joseph had none, and the confirmation to Louis must prevail.

If Joseph Lacroix ever cultivated the lot, it is not at all improbable it was under Louis, to whom he sold it, and hence the proof in Louis' name. There is evidence that Louis bought a lot in the Grand Prairie—27 Mo. 354, Allen v. Moss.

Glover & Shepley
atty for Pl'ff